

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

CHARLES K. WORKMAN,

Plaintiff,

v.

CIVIL ACTION NO. 3:06-0648

AMIALE FIGUEROA,
Individually, and as an agent,
representative, and/or employee of
CENTRAL HAULING COMPANY,

Defendants.

MEMORANDUM OPINION AND ORDER

Plaintiff moves to remand this action to state court, alleging that the amount in controversy does not meet the \$75,000 threshold. For the reasons stated below, the Court **DENIES** Plaintiff's Petition to Remand (Doc. #5).

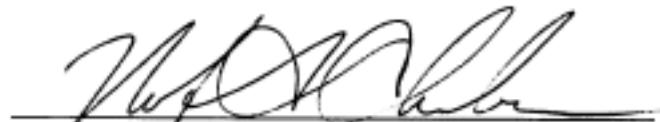
Defendants removed this complaint from Cabell County Circuit Court under 28 U.S.C. § 1441, asserting diversity jurisdiction under 28 U.S.C. § 1332. The only dispute is whether the amount in controversy exceeds \$75,000, a prerequisite to this Court's jurisdiction. The sole Plaintiff claims personal injury damages, in an unstated amount, arising from an automobile collision. His complaint includes a claim for punitive damages but does not seek a specific amount of compensatory damages.

Defendants bear the burden of establishing the amount in controversy, and they have met their burden. Plaintiff has medical expenses exceeding \$15,000 with some future or continuing treatment expected. He has some amount of lost wages, having missed eight days of work. The

injuries are described to include pain, suffering, diminished capacity to enjoy life, lost ages and loss of earning capacity. Plaintiff apparently made a pro se settlement demand well above the jurisdictional threshold, and his counsel declined to enter into a binding stipulation to limit any award to an amount below the threshold. The possibility of punitive damages coupled with this evidence as to his compensatory damage claims are sufficient to sustain removal. See McCoy v. Erie Insurance Co. 147 F Supp 2^d 281 (S.D.W.Va. 2001). Plaintiff's Petition to Remand is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: September 27, 2006



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE